

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

PARKERSBURG

VICTOR NUTTER,

Petitioner,

v.

Case No. 6:09-cv-01174

ADRIAN HOKE, Warden,  
Huttonsville Correctional Center<sup>1</sup>,

Respondent.

PROPOSED FINDINGS AND RECOMMENDATION

On October 28, 2009, Petitioner, Victor Nutter, filed a document entitled "Notice of Intent to Appeal" (docket sheet document # 1) and a document entitled "Appeal from a West Virginia Supreme Court Ruling No. 090368 and a Ruling from the Judicial Investigation Commission No. 93, 94, 95, 2009" (# 2), in which he attempts to appeal from the summary refusal by the Supreme Court of Appeals of West Virginia of an original jurisdiction petition filed therein (# 2, Ex. 11), and from a ruling of the West Virginia Judicial Investigation Commission finding no probable cause for Petitioner's judicial complaints (Id., Ex. 10). This court does not sit as an appellate court, reviewing rulings of the Supreme Court of Appeals of West Virginia. The "appeal" documents seek relief in the form of the reversal of his convictions and release

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<sup>1</sup> Adrian Hoke is the current Warden at the Huttonsville Correctional Center. The Clerk is directed to substitute Warden Hoke as the Respondent herein.

from prison; thus the "appeal" documents have been docketed as a petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254.

Petitioner has previously filed a petition for a writ of habeas corpus under section 2254, Nutter v. Seifert, No. 6:07-cv-00140, which was denied by this court in Orders entered on March 28, 2008.

Title 28, United States Code, Section 2244(b)(3)(A) provides that "[b]efore a second or successive [habeas corpus application under section 2254] is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." Petitioner has failed to obtain authorization from the United States Court of Appeals for the Fourth Circuit to file a second habeas corpus petition in this court. Moreover, it appears that Petitioner has not shown that his claims are not subject to dismissal under 28 U.S.C. § 2244(b). Accordingly, Petitioner's "Notice of Intent to Appeal" (# 1) and "Appeal" (# 2) documents must be dismissed. It is respectfully **RECOMMENDED** that this action be dismissed without prejudice.

Petitioner is notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Joseph R. Goodwin, Chief United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section

636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, Petitioner shall have fourteen days (filing of objections) and then three days (service/mailing) from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the district court and a waiver of appellate review by the circuit court of appeals. Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 155 (1985); Wright v. Collins, 766 F.2d 841, 846 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Copies of such objections shall be served on Chief Judge Goodwin.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to Petitioner.

March 31, 2010  
Date

Mary E. Stanley  
Mary E. Stanley  
United States Magistrate Judge